



ADOT P3 Program Guidelines

August ' \$, 201%



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1. INTRODUCTION

1.1 Statutory Authority

The State of Arizona's 49th Legislature passed HB 2396 which repealed Title 28, Chapter 22 of the Arizona Revised Statutes and amended Title 28 Arizona Revised Statutes by adding a new Chapter 22 and amended Sections 35-701, 42-5069 and 42-6208 Arizona Revised Statutes relating to Public Private Partnerships (P3s). The governing statute is, for the purpose of these Guidelines, referenced as Chapter 22 of Arizona Revised Statutes (ARS) Title 28, or ARS §28-7701 through ARS §28-7710. The statutes address private sector participation in enhanced, upgraded or new facilities used or useful for the safe transport of people or goods via various modes of transport.

These Guidelines have been developed pursuant to the provision that "the Department" [Arizona Department of Transportation] "shall adopt such Rules or Guidelines as it determines necessary to carry out this Chapter."

1.2 Revisions

These Guidelines will be revised from time to time and such revisions will be promptly posted on the Department's website. Initially, modifications may be made relatively frequently as a result of lessons learned as the first projects are considered and developed. As the Public-Private Partnership Program (P3 Program) matures, the frequency of such changes is expected to diminish. Those performing work or otherwise relying on these Guidelines assume all risk related to any changes therein. The Department shall not be liable for any damages sustained by anyone based on a modification or failure to modify the Guidelines.

The Guidelines are intended to provide general parameters concerning P3 project identification and implementation processes and not defined requirements. The Department recognizes that each project will have its unique characteristics and goals and that tailored approaches to assessing and implementing projects will be required for the P3 program to be successful. The Department intends to retain the flexibility to modify or deviate from these Guidelines as it sees fit and in the interest of the State and the public.

1.3 Purpose

The purpose of these Guidelines is to comply with the requirements of HB 2396 and ARS Title 28 and to document a clear, consistent, efficient and transparent process for the Department's interaction with the private sector related to its management of innovative project delivery contemplated by the governing statutes. These Guidelines will be for the Arizona Department of Transportation's use in consistently managing the project development and procurement process, including project solicitation, evaluation and award. The Guidelines will be available to the public and to private and other governmental entities on the Department's website for reference.

1.4 Administration

The Office of P3 Initiatives administers and has overall responsibility for any and all project screening, P3 proposals issued by the Department, and for any and all unsolicited proposals that may be received by the Department, and for projects involving public private partnership agreements by the various project delivery methods set forth

in ARS Title 28. This includes coordination of the P3 Program within ADOT, externally and with other governmental agencies and for media and public relations.

1.4.1 Office of P3 Initiatives

The Office of P3 Initiatives is created by and reports to the Executive Director for Planning and Policy. The Executive Director for Planning and Policy or his/her designee will be the Director of the Office of P3 Initiatives. The Executive Director for Planning and Policy reports directly to the Arizona Department of Transportation Director. If a designee, the Director of the Office of P3 Initiatives reports to the Executive Director for Planning and Policy. The Director of the Office of P3 Initiatives is responsible for managing the Office and directing the P3 Program. Office staff and the Program Management Consultant report directly to the Director of the Office of P3 Initiatives.

1.4.2 Reliance on Department Staff

Staff and resources of other Divisions of the Department will be available to the P3 Program to provide proper review and input to the evaluation of Proposals and implementation and oversight of P3 projects. Resources that are likely to be needed will be from, but not limited to, Roadway, Bridge, Environmental, Communications and Community Partnerships, Legal Counsel, Finance, Accounting, Programming, Right-of-Way, Utilities, Construction, Operations, Maintenance, ITS Technologies, Motor Vehicle Division, Government Relations and other related areas. Sharing of resources from other Divisions to support the P3 Program will be done through close coordination between Division and Section Managers and the staff of the Office of P3 Initiatives.

1.4.3 Outside Consultants

The Department may also procure and engage the services of an array of consultants to provide essential planning, study, management, advisory, and oversight services to the P3 Program on a Program and/or Project-specific basis. These consultants may include: Program Management, Financial, Legal, Technical, Traffic and Revenue, Tolling Technologies/Operations, Communication and Community Partnerships and others as needed. The Program Management Consultant will report to the Director of the Office of P3 Initiatives, supplementing dedicated and other Department staff and providing management and direction to the other Consultants to the Department.

1.5 Goals and Objectives

The Department's goals and objectives in implementing the statutes referenced above are to accelerate and enhance the delivery of transportation projects benefiting the State and its citizens by utilizing additional available project delivery methods. These Guidelines will be used by the Department's Office of P3 Initiatives to oversee and administer the procurement and execution of projects delivered under the authority given by ARS Title 28.

For those projects selected, the Department shall determine that utilization of Innovative Project Delivery methods can provide some or all of the following:

- Greater partnership opportunities between the public and private sectors
- More choices in funding and delivery methods
- Accelerated project delivery
- Greater cost certainty
- Minimized public cost and investment, including better leveraging of limited public funds

- Improved life-cycle costs and/or quality
- Less congested facilities
- Reduced and more consistent travel times
- Improved quality of life
- Conservation of fuel
- Improved air quality and other environmental benefits
- Enhanced safety attributes
- Other public purposes and benefits arising from the proposed project

1.6 Reservation of Right to Waive Requirements

The Office of P3 Initiatives, at its sole discretion, may waive or deviate from some or all of these Guidelines where it deems such waiver(s) or deviation to be in the best interest of the State. In no event shall any such waiver of deviation result in any liability for the Departments, the State or any other party.

1.7 P3 Advisory Committee (PAC)

The P3 Advisory Committee (PAC) is a standing committee consisting of up to eleven members. The PAC is appointed by and serves at the pleasure of the Director of the Arizona Department of Transportation.

1.7.1 Role

The role of the PAC is to advise the Office of P3 Initiatives on issues associated with proposed P3 projects. The PAC's opinion will be considered by the Office of P3 Initiatives in deciding whether to move a project forward but will not be determinative or binding. The Office of P3 Initiatives will provide project information in broad form to the PAC and will respond to questions by the PAC. The PAC may participate in and/or convene public meetings during the consideration of potential projects.

1.7.2 Members

The PAC may include:

- Chair – Director of the Office of P3 Initiatives
- Transportation Board Representative
- Maricopa Association of Governments Representative
- Pima Association of Governments Representative
- Central Arizona Association of Governments Representative
- Designees of other MPOs/COGs (2)
- Others as designated by the ADOT Director
- FHWA Arizona Division Administrator (ex officio)

1.7.3 PAC Support

Office of P3 Initiatives will provide administrative support to the PAC.

1.7.4 Period of Involvement

The PAC will be consulted by the Office of P3 Initiatives as it considers Solicited and Unsolicited Proposals for P3 projects. It will be presented with the Initial Evaluation of both Solicited and Unsolicited Proposals for its consideration. It may be consulted from time to time by the Office of P3 Initiatives during the process of evaluation of P3 procurements prior to issuing RFPs or RFQs.

1.7.5 Meetings

The Committee will meet annually to receive a briefing on the status of the Department's P3 Program. It will also meet as required for consideration of potential projects and it may meet in conjunction with project-specific Public Meetings. PAC meetings will be open to the public unless it is necessary to hold a closed session for the purposes of discussing confidential information particularly related to Unsolicited Proposals.

1.8 Technical Advisory Committee (TAC)

A P3 TAC is a project-specific committee consisting of designated senior Department personnel and potentially representative(s) of organization(s) responsible for transportation in the area of a proposed project and will be formed by the Office of P3 Initiatives as required.

1.8.1 Role

The role of the TAC is to advise the Office of P3 Initiatives on technical issues related to proposed P3 projects, both solicited and unsolicited. As requested, it will provide technical input in the assessment of candidate projects and during the development of Solicitation Documents and other technical analysis as required in the evaluation of proposals.

1.8.2 Members

The members of the TAC may consist of Department staff and consultants as deemed appropriate for the work under consideration. Since a Committee is formed for a specific purpose, there may be several such Committees in existence at any time, as there may be several potential P3 procurements under consideration at the same time. Each Committee will be formed with a membership appropriate to the project under consideration.

1.8.3 TAC Support

Office of P3 Initiatives will provide administrative support to the TAC.

1.8.4 Period of Involvement

The Office of P3 Initiatives will designate the TAC members as needed to support project identification and evaluation processes. Along with the members and specific role, the period of involvement will be defined when the Committee is formed.

1.8.5 Meetings

Meetings will be held as necessary to address all relevant issues and provide input as requested by the Office of P3 Initiatives.

1.9 State Transportation Board

The Transportation Board (Board) will be briefed periodically by the Director of the Office of P3 Initiatives on the status of the P3 Program. The Board will be consulted prior to the issuance of any RFQ or RFP for a highway project to be procured by Chapter 22 of ARS Title 28. Such proposed projects must be consistent with and ultimately included in any statewide plan approved by the Board.

The Board will appoint one Board Member to serve on the PAC.

1.10 Steering Committee

The Steering Committee is a standing committee which is comprised of senior Department personnel and which will oversee the P3 Program.

1.10.1 Role

The Steering Committee has the responsibility to provide guidance and direction to the P3 Program. The Department's Director has ultimate authority for the Program.

1.10.2 Members

Steering Committee members include:

- Chair -- Executive Director for Planning and Policy
- Director of the Office of P3 Initiatives
- Chief of Operations
- State Engineer
- The Department's Chief Financial Officer
- Director, Multimodal Planning Division
- Director, Communication and Community Partnerships
- Director, Motor Vehicle Division
- Director, Administrative Services
- Director, Government Relations
- Director, Enforcement and Compliance

1.10.3 Steering Committee Support

Office of P3 Initiatives will provide administrative support to the Steering Committee.

1.10.4 Period of Involvement

The Steering Committee will provide oversight and direction to the P3 Program for the duration of the Program's life.

1.10.5 Meetings

The Steering Committee will meet from time-to-time as appropriate, at the discretion of the Chair.

2. DEFINITIONS

The definitions contained herein are provided to aid in the understanding of the Guidelines document and may be modified in Solicitation Documents or Agreements.

2.1 Agreement

A binding Agreement or series of agreements between the Department and a Private Partner to plan, finance, design, construct, operate and maintain (or any combination of these activities) an Eligible Facility (also referred to as a Contract).

2.2 Best Value Selection

Best Value, also known as “financial and other factors”, is a selection approach that takes into account financial and technical components. Best Value may be based on both qualitative and quantitative considerations or qualitative alone. The specific Best Value criteria will be determined based on the project under consideration.

2.3 Concession

Any lease, ground lease, franchise, operating agreement, easement, permit or other binding agreement transferring rights for the use or control, in whole or in part, of an Eligible Facility by the Department or other unit of government to a Private Partner.

2.4 Contract

A binding Agreement between the Department and a Private Partner to finance, design, construct, operate and maintain (or any combination of these activities) an Eligible Facility (also referred to as an Agreement).

2.5 Department

The Arizona Department of Transportation.

2.6 Design-Build Agreement (DB)

An Agreement that provides for design and construction of an Eligible Facility by a Private Partner. The P3 Program will not be used for Design-Build Agreements that do not include additional P3 components. DB will be procured under ARS §28-7363-7365.

2.7 Design-Build-Finance Agreement (DBF)

An Agreement that provides for the finance, design and construction of an Eligible Facility by a Private Partner.

2.8 Design-Build-Maintain Agreement (DBM)

An Agreement that provides for design and construction of an Eligible Facility by a Private Partner and the maintenance of all or a portion of the Eligible Facility for a specified period of time.

2.9 Design-Build-Finance-Operate Agreement (DBFO)

An Agreement that provides for financing, design and construction of an Eligible Facility by a Private Partner and the operation of all or a portion of the Eligible Facility by the Private Partner for a specified period of time.

2.10 Design-Build-Operate-Maintain Agreement (DBOM)

An Agreement that provides for design and construction of an Eligible Facility by a Private Partner and the operation and maintenance of all or a portion of the Eligible Facility for a specified period of time.

2.11 Design-Build-Finance-Operate-Maintain Agreement (DBFOM)

An Agreement that provides for financing, design and construction of an Eligible Facility by a Private Partner and the operation and maintenance of all or a portion of the Eligible Facility for a specified period of time.

2.12 Eligible Facility

Any facility developed or operated in accordance with ARS Title 28 including any enhanced, upgraded or new facility used or useful for the safe transport of people or goods via one or more modes of transport, whether involving highways, railways, monorails, transit, bus systems, guided rapid transit, fixed guideways, ferries, boats, vessels, intermodal or multimodal systems or any other mode of transport, as well as facilities, structures, parking, rail yards or storage facilities, vehicles, rolling stock or other related equipment, items or property.

2.13 Evaluation Committee

A Committee consisting of Department personnel, assisted as appropriate by Department staff, outside consultants and other professionals as identified, which evaluates Statements of Qualifications and Proposals against criteria established in Solicitation Documents.

2.14 Handback Provisions

The terms, conditions, requirements and procedures governing the condition in which a Private Partner is to deliver an Eligible Facility to the Department upon expiration or earlier termination of the Agreement, as set forth in the Agreement.

2.15 Industry Meeting

A meeting held in order to inform the industry of the P3 program or a specific opportunity and/or to obtain industry feedback. These may be informal one-on-one meetings or general open meetings.

2.16 Office of P3 Initiatives

The Office of the Department which has responsibility for the Department's P3 Program.

2.17 P3 Program

The activities of the Office of P3 Initiatives which encompass overall Program administration and budgeting, the identification of projects to be delivered pursuant to Chapter 22 of ARS Title 28, the evaluation and selection of Private Partners and the administration during their terms of any resulting Agreements or Contracts.

2.18 Pre-Development Agreement (PDA)

An Agreement with a Private Partner to provide development services for a project that is in a very early development stage and is not yet ready for a firm bid. These services may include concept definition, scope, conceptual financial plans, etc. necessary to advance a project to the stage at which project technical and financial feasibility can be determined and, if feasible, a firm price and/or financial arrangements can be negotiated and an Agreement executed. The P3 Private Partner for a PDA is selected on a conceptual proposal basis.

2.19 Private Partner

A person, entity or organization that is not the Federal government, the State of Arizona, a political subdivision of the State of Arizona, or a unit of government that enters into a P3 Agreement with the Department.

2.20 P3 Advisory Committee (PAC)

A standing Committee which advises the Office of P3 Initiatives on potential P3 projects.

2.21 Proposal

A submission by a potential Private Partner pursuant to a Request for Proposal or on an unsolicited basis for a P3 project.

2.22 Proposer

A potential Private Partner which submits a Proposal to develop a P3 project.

2.23 Proposer Review Meeting

A meeting held jointly or individually to share Department information regarding RFPs with shortlisted Proposers and to obtain feedback, comments and suggestions from such Proposers.

2.24 Public-Private Partnership (P3)

An Agreement formed between the Department and a Private Entity pursuant to ARS Title 28 that allows for greater private sector participation in the delivery and financing of Eligible Facilities rather than by traditional delivery methods.

2.25 Request for Information (RFI)

A document issued by the Office of P3 Initiatives to the P3 industry to solicit input or information related to any aspect of P3 development.

2.26 Request for Proposal (RFP)

A solicitation by the Office of P3 Initiatives for a proposal to develop, design, build, finance, operate and/or maintain an Eligible Facility.

2.27 Request for Qualifications (RFQ)

A solicitation by the Office of P3 Initiatives for a Statement of Qualifications (SOQ) which demonstrates a Private Partner's ability to develop, design, build, finance, operate and/or maintain an Eligible Facility.

2.28 Statement of Qualifications (SOQ)

A response to an RFQ by a Private Partner which demonstrates its capabilities and capacity to develop, design, build, finance, operate and/or maintain a project described in the RFQ.

2.29 Solicitation Documents

Procurement documents initiated by the Department to request information, qualifications, and/or proposals to develop a P3 project.

2.30 Solicited Proposal

A procurement initiated and issued by the Department as a result of its determining that a project may best be developed as a P3. Typically this will follow a RFQ and short-listing process.

2.31 Steering Committee

A standing Committee of senior Department personnel which oversees the Department's P3 Program.

2.32 Technical Advisory Committee (TAC)

A P3 TAC is a project-specific committee consisting of senior Department personnel and potentially representative(s) of organization(s) responsible for transportation in the area of a proposed project as designated by the Office of P3 Initiatives

2.33 Technical Provisions

The document describing the scope of work and related standards, criteria requirements, conditions, procedures, specifications and other provisions for a P3 project.

2.34 Unsolicited Proposal

A submittal by a potential Private Partner that conforms to the statutory authority, any Rules and these Guidelines with respect to a project which has not been initiated by the Department is considered an Unsolicited Proposal.

2.35 User Fee

A fee charged for use of an Eligible Facility, usually a toll for a highway or fare for rail or bus travel.

3. PROJECT PROCUREMENT

If the Department determines that a proposed project, whether arising from an Unsolicited Proposal or its internal project selection process, serves a public purpose and is suitable or potentially suitable for delivery under one of the mechanisms further described in 3.1, the Department may request Proposals to develop, finance, construct, improve, maintain or operate, or any combination thereof, the Eligible Facility. If such a determination is made, any Rules developed pursuant to these Guidelines and/or Rules that may be developed pursuant to ARS §28-7702 and these Guidelines which have been developed under the same statute will govern the procurement.

3.1 Delivery Mechanisms

Both the Solicited and Unsolicited Proposal processes will accommodate several different types of P3 project and service delivery methods. The type of delivery mechanism will be determined on the basis of, among other things, the nature and status of the project, project risk factors, schedule, funding and goals. The procurement package will reflect the intended project delivery mechanisms as set forth in ARS §28-7703. Possible delivery mechanisms for P3 projects include:

- Pre-Development Agreements potentially leading to other implementing agreements
- Design-Build Agreement (see further information in Section 3.2 below)
- Design-Build-Maintain Agreement
- Design-Build-Finance-Operate Agreement
- Design-Build-Operate-Maintain Agreement
- Design-Build-Finance-Operate-Maintain Agreement
- Concession Agreement providing for the private partner to design, build, operate, maintain, manage or lease and Eligible Facility
- Any other project delivery method or agreement or combination of methods or agreements that the Department determines will serve the public interest; for example Design-Build-Finance

3.2 Procurement Process

The Department will select the appropriate project delivery method for each project. The Department has determined that neither Solicited nor Unsolicited Proposals that involve Design-Build Agreements and no other components of P3 delivery will be procured under these guidelines or through the Office of P3 Initiatives. Standard Design-Build Agreements will be procured in accordance with ARS §28-7363-7365. However, nothing herein shall preclude either an Unsolicited or Solicited Proposal from including a Design-Build component provided it includes other P3 elements.

3.2.1 Phased Procurement

The Department may use a multi-phase process for Department initiated procurements for a P3 project. A multi-phase selection process may consist of some or all of the following: the issuance of a RFI, issuance of a RFQ, Proposer Review Meetings, and/or issuance of an RFP. The determination on whether to utilize some or all of these procurement phases will be project-specific. Although there may be several steps in the solicited procurement process, common terminology refers to “one-step” or “two-step” procurements. The former is used when an RFP is posted and any entity may respond. The latter is used when an RFQ is issued and then SOQs are evaluated and then used as a basis for short-listing proposers eligible to receive RFPs.

For Unsolicited Proposals, a Proposal is received and a determination made that the Eligible Facility serves a public purpose and is a project that the Department wishes to pursue, the Department may issue an RFP for competing project Proposals or may first issue an RFQ for the Eligible Facility described in the Unsolicited Proposal. The Department may also make certain modifications to the potential project submitted in the Unsolicited Proposal for the RFQ, RFP or both.

The purpose of an RFQ is to identify qualified candidates for continuing in the procurement process. The Department may prequalify or short-list one or more candidates based on their responses to the RFQ. Those candidates will then be eligible to receive an RFP and submit a proposal for the project in response to the RFP. The Department is not obligated to utilize an RFQ and may, at its sole discretion, proceed directly to the issuance of an RFP. If procurement is for a proposed project identified by an Unsolicited Proposal the entity that submitted the original Unsolicited Proposal may, in the sole discretion of the Department, be required to submit a SOQ in response to an RFQ or a Proposal in response to an RFP.

Further details on the Unsolicited and Solicited Proposal process are found in Sections 4 and 5 of these Guidelines.

3.2.2 Public Notice and Document Availability

The Department will issue public notices of its procurements consistent with applicable legal requirements. Notices will generally describe the project scope or services desired, indicate the recipient of and the deadline for responses and will contain such other information as the Department deems appropriate for the project.

A copy of any RFQ or RFP that is formally issued by the Department will be made available to the public on the Department's website.

3.3 Public Records and Confidentiality

No portion of a Proposal other than the Executive Summary will be released or disclosed by the Department before an award of the P3 Contract and the conclusion of any protest or other challenge to the award, pursuant to ARS §28-7707, Section B.

Pursuant to ARS §28-7707, Section B, all Proposal contents other than the Executive Summary will be treated as confidential and will not be released or disclosed to the public or to anyone other than Department and consultant personnel who are involved in the procurement prior to Contract award and the conclusion of any protest or challenge. Material contained in SOQs will be treated similarly. Maintaining confidentiality is in the interest of the Department as premature release of confidential information could harm the Department's negotiation position, taint the procurement process, or render a short-listing/prequalification or award decision subject to challenge.

It is anticipated that the Department will institute formal safeguards for procurement of each project concerning SOQ and Proposal "security". Issues to be addressed include where materials will be stored, document access and under what circumstances, etc. All evaluators will be required to execute Confidentiality/Non-Disclosure and Conflict of Interest Agreements which require each individual to keep the evaluation and procurement materials confidential and require disclosure of potential or actual conflicts of interest with Proposer teams (e.g., financial interest, etc.)

3.4 Proposal Development Fee/Stipend

The Department may, pursuant to the Solicitation Documents, pay to an unsuccessful Proposer that submits a Proposal in response to an RFP, a stipulated amount in exchange for the work product contained in that Proposal. The Department may also agree to pay a stipulated amount if it cancels the procurement prior to the Proposal due date. In each case, the stipulated amount and the terms under which such amount may be paid will be stated in the RFP. No stipulated amounts will be paid unless specific language is included in Solicitation Documents.

Solicitation Documents containing stipulated amounts are expected to include language whereby (1) the Department shall have the right to make use of any work product contained in the proposal, including the technologies, techniques, methods, processes, ideas, and information contained in the project design; and (2) the use by the unsuccessful Proposer of any portion of the work product contained in the Proposal is at the sole risk of the unsuccessful Proposer and does not confer liability on the Department. The use by the Department of any technical element contained in an unsuccessful Proposal would be at the sole risk and discretion of the Department and would not confer liability on the recipient of the stipulated amount.

If the Eligible Facility involves use of Federal-aid funds or credit assistance, then language will be included in the RFP related to any Proposers eligible to receive the stipulated amount in exchange for work product contained in the Proposal that will comply with Federal regulations which currently state the Proposer be given the option whether to accept the stipulated amount and deliver the work product in exchange, or to forego the stipulated amount and retain all rights to the work product.

3.5 Rights Reserved

The Department reserves all rights available by law and in equity in its procurement process, including, without limitation, the sole right to:

1. Modify the procurement process at its sole discretion to address applicable law and/or the best interests of the Department and the State of Arizona;
2. Develop the project in any manner that it, at its sole discretion, deems necessary;
3. Issue an RFQ relating to a project described in an Unsolicited Proposal after the rejection or termination of the evaluation of the Unsolicited Proposal and any Competing Proposals;
4. Modify all dates set or projected in the RFQ and RFP;
5. Reject any and all submittals, responses, SOQs and Proposals, whether Solicited or Unsolicited, at any time;
6. Terminate evaluation of any and all SOQs or Proposals, whether Solicited or Unsolicited, at any time;
7. Suspend and/or terminate negotiations with any Proposer at any time, elect not to commence negotiations with any responding Proposer and engage in negotiations with other than the highest ranked Proposer;

8. Negotiate with a Proposer without being bound by any provision in the Proposal, whether Solicited or Unsolicited;
9. Negotiate with a Proposer to include aspects of unsuccessful Proposals for the project in the Agreement;
10. Negotiate with a Proposer other than the apparent Best Value Proposer if negotiations with the apparent Best Value Proposer are unsuccessful or if a Financial Close with the apparent Best Value Proposer does not occur;
11. Require confirmation of information furnished by a Proposer, require additional information from a Proposer concerning its SOQ and/or Proposal, require additional evidence of qualifications to perform the work described in the RFQ and RFP, including holding meetings and exchanging correspondence with the Proposers to seek an improved understanding of the SOQs and Proposals. If individual Proposer informational meetings are held, all Proposers submitting a responsive SOQ and Proposal shall be afforded an opportunity to participate in an individual Proposer informational meeting;
12. Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to a RFQ, RFP or other Departmental requests;
13. Add or delete Proposer responsibilities from the information contained in the RFQ or RFP;
14. Revise and modify the evaluation factors or otherwise revise or expand the evaluation methodology for the SOQ at any time before the SOQ due date and for the Proposals at any time before the Proposal Due Date. If such revisions or modifications are made, the Department shall post an Addendum setting forth the changes to the evaluation criteria or methodology;
15. Cancel an RFQ or RFP in whole or in part at any time prior to the execution of an Agreement without incurring any cost obligations or liabilities;
16. Issue a new RFQ and/or RFP after withdrawal of original RFQ and/or RFP;
17. Not shortlist or prequalify any Proposer responding to an RFQ;
18. Not issue an RFP;
19. Issue Addenda, Supplements and Modifications to an RFQ and/or RFP;
20. Appoint Evaluation Committees to review SOQs and Proposals, make recommendations and seek the assistance of outside technical, financial and legal experts and consultants in SOQ and Proposal evaluation;
21. Waive immaterial deficiencies in a Proposal or SOQ, accept and review a non-conforming Proposal or SOQ or permit clarifications or supplements to a Proposal or SOQ;

22. Disqualify any Proposer that changes its submittal without Department approval;
23. Disqualify any Proposer under an RFQ, an RFP or during the period between the RFQ or RFP for violating any rules or requirements of the procurement set forth in the RFQ, the RFP or in any other communication from the Department;
24. Not issue a Notice to Proceed after execution of the Agreement;
25. Not pursue TIFIA credit approval on behalf of the Proposers;
26. Not seek an allocation for Private Activity Bonds (PAB) on behalf of the Proposers;
27. Develop some or all of a project itself;
28. Disclose information contained in a response submitted to the Department as governed by the law and/or the Solicitation Documents;
29. Exercise any other right reserved or afforded to the Department under a procurement document or applicable law or in equity;
30. Disqualify any proposer for any conflict of interest, including use of any key former Department employee hired within 12 months of a solicitation in the pursuit of a P3 contract.

Additional reservations of rights may be included in the Solicitation Documents for a project. Except as set forth in the Solicitation Documents, should the procurement process or negotiations be suspended, discontinued or terminated the Proposer shall have no rights of recourse, including reimbursement of Proposal review fee(s) or costs associated, directly or indirectly, with the Proposal development or presentations.

3.6 Ex-Parte Communications

No Proposer or representative thereof shall have any ex-parte communications during the procurement for a proposed project with any member of the Transportation Board or with any of the Department's staff, advisors, contractors or consultants involved with the procurement, except for communications expressly permitted by the RFQ, RFP or except as approved in advance by the Director of the Office of P3 Initiatives or his/her designee, in such individual's sole discretion. The foregoing restriction shall not, however, preclude or restrict the Proposer from communications with regard to matters unrelated to the RFQ, RFP or from participation in public meetings. Any Proposer engaging in prohibited communications may be disqualified in the sole discretion of the Department. Additional requirements and limitations on communications may be included in the solicitation documents for a project. The Department will provide a list in the Solicitation Documents of agencies, organizations, stakeholders, consultants and contractors with whom Proposers should not communicate.

3.7 Disclaimers and Conditions for Proposals

Unless otherwise stated in the Solicitation Documents, under no circumstance shall the Department, the State of Arizona or any department or agency thereof be liable for or reimburse the costs incurred by the Proposers whether or not they are selected, or if the procurement process is delayed, altered or terminated.

Except as expressly provided in the Solicitation Documents, any and all information the Department makes available to Proposers shall be as a convenience to the Proposer without representation or warranty of any kind.

4. UNSOLICITED PROPOSALS

4.1 Authority

The statutory authority for the Department's utilization of P3s is described in Section 1 of these Guidelines. ARS §28-7704, Section A.2 authorizes procurements arising from Unsolicited Proposals if the Department determines that such proposal has sufficient merit and that a reasonable opportunity is afforded other entities to submit competing proposals for consideration. This authority permits the consideration and use of a variety of project delivery methods and forms of agreement. A submittal by a potential Private Partner that conforms to the statutory authority and regulations with respect to a project which has not been initiated by the Department is considered an Unsolicited Proposal. Each Unsolicited Proposal must include the information set forth in Section 4.6 of these Guidelines.

4.2 Innovation

The Department sees the primary benefit of the Unsolicited Proposal process as the opportunity to receive creative and innovative ideas that provide material benefit to the State beyond the traditional procurement methods. The Department encourages the private sector to place a strong emphasis on innovation in developing Unsolicited Proposals.

4.3 Costs Incurred

All costs incurred by the Proposer in preparing and submitting an Unsolicited Proposal will be borne solely and completely by the Proposer. Under no circumstances will the State, the Department or any of their agents, representatives, consultants, directors, officers or employees be liable for, or otherwise obligated to, reimburse the costs incurred by the Proposer, whether or not selected for negotiations, in developing the Proposal or negotiating an Agreement.

4.4 Preliminary Meetings to Discuss Potential Unsolicited Proposals

Potential Proposers considering the submission of an Unsolicited Proposal are encouraged to request one-on-one meetings with the Department to have preliminary discussions on potential Unsolicited Proposals prior to development of a formal proposals and submission under the P3 guidelines. Such discussion(s) are intended to give the Department a clear understanding of the proposer's concept, and to give the Department the opportunity to let the potential proposer received feedback as to whether or not the Department believes there is "sufficient merit" to pursue such a proposal. It is important to note these discussion(s) are held in the context of maintaining a "reasonable opportunity for other entities to submit competing proposals for consideration and a possible contract award" and therefore are in no way meant to indicate to the potential Proposer how to develop a concept that the Department would find acceptable, or to discuss possible "deal points" of such a proposal.

Regardless of any feedback from the Department arising from any such preliminary meeting, there is no prohibition on submission of an Unsolicited Proposal so long as it meets all statutory requirements and Guideline requirements in effect at the time of the submission.

4.5 Proposal Review (Administration) Fees and Other Fees

4.5.1 Administration Fees

Unlike a Solicited Proposal where the Department defines a project and establishes project parameters, the definition of a project through an Unsolicited Proposal is initially established by the Proposer. As a result, an evaluation of the Proposal by the Department will be made to determine if:

- The project is of value to the State
- The Proposer is qualified to execute the project if awarded
- The proposed project has a reasonable probability of being successful as a P3 project

The burden is on the Proposer to demonstrate these attributes to the Department.

Unsolicited Proposals will generally be subject to a three-step evaluation process: comprised of Pass/Fail, Initial Evaluation, and Detailed Evaluation though the Department reserves the right to modify such process in its discretion if in the benefit of the State and the public. Once a Proposal has been determined to be in compliance with the filing requirements (Pass/Fail test), the Department will conduct an Initial Evaluation and then a Detailed Evaluation if the Initial Evaluation indicates further evaluation is warranted. The Department may reject the Unsolicited Proposal and return it to the Proposer at any time during this period if it determines that the Unsolicited Proposal lacks the necessary merit to move forward or for any other reason.

When an Unsolicited Proposal is received it must be accompanied by two certified checks. These checks together constitute the Administration Fee for Unsolicited Proposals. The intended purpose of the Administration Fee is to cover the costs of the Department for evaluation of Unsolicited Proposals. The Department, at its sole discretion, may waive the fee(s) for an unsolicited proposal, in whole or in part, if it determines that its costs have been substantially covered by a portion of the fee or if it is otherwise determined to be reasonable and in the best interest of the State.

One check must be for \$15,000 to cover the Initial Evaluation costs and will be deposited by the Department once it is determined that the Unsolicited Proposal passes the Pass/Fail test. If the Unsolicited Proposal fails the Pass/Fail test, both checks will be returned to the submitting entity. The second check submitted will be for the Estimated Detailed Review Fee; that amount should be based on the schedule below and calculated on the anticipated capital cost of the project described by the Unsolicited Proposal. If no capital costs are part of the Unsolicited Proposal please contact the Department to discuss valuation of the Estimated Detailed Review Fee. This second certified check will be deposited by the Department once it determines that the Proposal has sufficient merit to move to the Detailed Evaluation. Should the Department determine after the Initial Evaluation that the Unsolicited Proposal lacks merit; the second check will be returned to the Proposer.

As part of the Initial Evaluation, an assessment will be made as to the anticipated complexity of the Detailed Evaluation. If this assessment leads the Department to determine that the Detailed Evaluation costs will be materially greater than the Estimated Detailed Review Fee submitted, the Proposer will be contacted and provided with an additional amount which must be paid by certified check or direct wire transfer prior to

the commencement of the Detailed Evaluation. If the Proposer does not wish to incur the additional costs, the Estimated Detailed Review Fee check will be returned and the Unsolicited Proposal review process terminated.

<u>Estimated Capital Cost</u>	<u>Estimated Detailed Review Fee</u>
<\$50 Million	\$ 20,000
\$50 Million to \$100 Million	\$ 35,000
\$100 Million to \$250 Million	\$ 60,000
\$250 Million to \$500 Million	\$ 85,000
\$500 Million to \$1 Billion	\$110,000
>\$1 Billion	\$135,000

These fee amounts may be changed from time to time. The amounts defined on the Department's website at the date and time of the original submittal will govern.

4.5.2 Cost of Public Input Process

Evidence of support by the public and elected officials may, in the Department's discretion, be a condition for advancing an Unsolicited Proposal to the procurement stage. The Department at its sole discretion may choose to seek public input through public polling, focus groups or other public meetings during the Detailed Evaluation. If it does so, the cost of such effort will be borne by the Proposer as a condition of continued evaluation and the Proposer will be informed of the additional cost prior to the commencement of the Detailed Evaluation as described in 4.4.1.

4.5.3 Other Costs of ADOT Services

If the Department rejects an Unsolicited Proposal after the Initial or Detailed Evaluations and the Proposer wishes to request further consideration the Department may, at its sole discretion, continue to further evaluate additional information presented by the Proposer. In such case, the Proposer will be responsible for paying all Department costs beyond the initial rejection, including staff and consultant costs. These costs will be estimated and must be paid by an additional certified check or direct wire transfer prior to the commencement of the further analysis.

4.5.4 Multiple Submissions

If after the release of the Executive Summary to the public (as described in Section 4.7.5 below) the Department receives an Unsolicited Proposal that is determined to be substantially similar to the Unsolicited Proposal under review, the Department will stop the review of the new Unsolicited Proposal at the point that determination is made. The proposal will then be returned to the second Proposer along with any checks for reviews that were not initiated. It will be in the Department's sole discretion to make the determination as to whether the submitted Proposal is substantially similar.

4.5.5 No Appeal or Commitments

Once the Department has made a final decision to reject an Unsolicited Proposal that decision will not be subject to any appeal process. No rights or remedies for any such rejection shall be afforded any entity submitting an Unsolicited Proposal.

While the Department encourages Preliminary Meetings to discuss potential Unsolicited Proposals and will make all efforts to make a timely review of submissions, the Department makes no commitment as to (i) the time period of any such review and

evaluation, (ii) the outcome of any such review and evaluation; (iii) the costs that the Department will incur and which may be payable by the entity submitting the Unsolicited Proposal or (iv) if, whether and when an Unsolicited Proposal that is not rejected will result in a solicitation for competing proposals or an Agreement. All entities submitting an Unsolicited Proposal do so at their own risk and without reliance on, representation or warranty by or recourse to the Department.

4.6 Required Contents

In order to be considered responsive, an Unsolicited Proposal must contain information which is sufficient for the Department to evaluate the merits of the proposed project, the capability of the Proposer to deliver the project, the financial viability of the project and the benefits to the State of the proposed project and of delivery utilizing a P3 delivery method over a conventional delivery method. The information required to be included in an Unsolicited Proposal will be posted on the Department's website and may be modified from time to time. The requirements included in these Guidelines on the day on which an Unsolicited Proposal is submitted will govern its contents and the evaluation process.

Twenty (20) bound copies, plus 20 CDs, of Unsolicited Proposals shall be delivered in a sealed box or boxes to ADOT at the following address:

Office of P3 Initiatives
Attn: Director
Arizona Department of Transportation
206 South 17th Avenue, Mail Drop 118A
Phoenix, AZ 85007

4.6.1 Executive Summary

The Proposer must include an Executive Summary covering the major elements of its Proposal that do not address the Proposer's price, financing plan or other confidential or proprietary information or trade secrets that the Proposer intends to be exempt from disclosure pursuant to ARS §28-7707. The Executive Summary will be a public document and will be posted on the Department's P3 website.

4.6.2 Qualifications

Information is required concerning the experience, expertise, technical competence and qualifications of the Proposer and of each member of the Proposer's management team and of other key employees, consultants and subcontractors, including the name, address and professional designation. Capacity of the Proposer in terms of resources and financial strength should be demonstrated by the inclusions of financial statements (including audited financial statements where available) and disclosure of material changes in the Proposer's financial position.

Sufficient financial information should be included in the Unsolicited Proposal to enable the Department to assess whether the Proposer has sufficient financial capacity to assume the responsibilities and obligations required to deliver the project on schedule and on budget.

4.6.3 Project Description

A description of the project depicted through graphics (maps, plans, etc.) with accompanying narrative of the following as applicable to the proposed project:

- The limits, scope, location of the proposed project, including where applicable, project length, termini, number of lanes and lane miles number and type of structures, (or other information associated with relative project size for non-highway projects), rolling stock, capital equipment, etc.
- Right-of-way requirements and acquisition status
- Interconnections to other transportation facilities and improvements to those facilities which will be necessary if the project is developed
- A conceptual project design if available
- A statement of the project's consistency with the Statewide Transportation Plan and relevant MPO plans and expected results including financial performance and improvements to mobility and capacity
- All studies which may have been completed by the Proposer concerning the project
- Information on environmental review requirements and status
- Information concerning the anticipated roles and responsibilities of the Department in connection with the proposed project, including estimated Department financial or other contributions.

4.6.4 Schedule

A schedule showing anticipated dates of contract award, commercial close, financial close (if applicable), start of construction, completion of construction, start of operations and anticipated major maintenance or reconstruction activities during the life of proposed Agreement.

4.6.5 Operations and Maintenance Plan

A plan describing the operations and/or maintenance of the completed facility is required if operations and/or maintenance is part of the Unsolicited Proposal. This should describe how the operations and/or maintenance will be addressed over the period of the agreement including, but not limited to, the management structure and approach, the proposed period of and approach to operations and maintenance, law enforcement, User Fee collection and enforcement (if applicable), routine maintenance, capital maintenance, emergency response, etc.

4.6.6 Finance Plan

A Finance plan describing the proposed financing of the project that identifies the source of funds to develop, design, construct, operate and/or maintain the Eligible Facility, including, as relevant, Proposer equity, commercial debt, TIFIA loans, proposed Department contributions and the projected revenue stream. If User Fees or other revenue streams will be generated by the project then a description of the User Fee structure must be included.

4.6.7 Financial Feasibility

The financial feasibility of the project should be demonstrated by showing that projected funding from all relevant sources is sufficient to support all necessary development, design, construction, operation and/or maintenance activities for the Eligible Facility, as well as providing for contingencies and sums to meet any Handback Provisions at the end of the Agreement. For Pre-Development Agreements the basis for determining

financial feasibility at this stage should be provided and the necessary steps to confirm and demonstrate such feasibility.

4.6.8 Legal Basis for the Project

The Proposer must cite the statutory authority (Federal, State and local if applicable) under which the project will be delivered. If such authority does not exist, exemptions or proposed changes to the relevant statutes or regulations which are necessary to allow the project to move forward should be identified.

4.6.9 Bonds, Letters of Credit, Guarantees, Insurance

The Unsolicited Proposal should describe the performance and payment security and insurance that will be provided in connection with the proposed project. The Proposer must demonstrate that it or its lead contractor is able to obtain performance and payment bonds, a letter of credit, parent company guarantee or other security acceptable to the Department and consistent with the size and complexity of the project. Similarly, it must demonstrate that it is able to obtain insurance covering general liability, auto liability, pollution liability and liability for errors and omissions as the Department, at its sole discretion, may require.

4.6.10 No Previous Breach of Contract or Disqualification

The Proposer is required to disclose if it or its subcontractors and consultants have, within the past five years, been found in breach of contract with the Department or been disqualified from contracting with the Department.

4.6.11 Licenses and Certifications

The Proposer must demonstrate that it and its members, subcontractors and consultants possess or can obtain by the date or award, if any, the licenses and certificates necessary to carry out their respective functions within the State.

4.6.12 Pre-Development Agreement (PDA) Submission Requirements

An Unsolicited Proposal submitted as a PDA will have an initial pre-development phase that will lead to a determination of feasibility and ultimately lead to a final scope, price and financing plan. Further information on the PDA process is found in Section 7.2 of these Guidelines. If the Unsolicited Proposal is based on the procurement delivery model of a PDA, **in addition** to the requirements in this Section 4.6 above, the Unsolicited Proposal must also include the following information:

- Overall approach to the PDA process and a demonstration of how the project can be effectively and efficiently developed, financed and completed
- Proposed initial scope of work to advance and define a feasible project that can be ultimately scoped, priced and financing secured. The proposed scope should clearly detail what work will be required. Further details on what may be included are found in Section 7.2 below
- Relative responsibilities between the Department and the Proposer during the PDA phase
- The payment structure, terms and conditions under which the Private Partner will be compensated for undertaking the PDA scope of work, including whether such work shall be contributed at a discount or as “sweat equity”
- Schedule and milestones applicable to the PDA scope activities;
- Explanation as to why the PDA approach is best for this Proposal
- Other elements necessary for completion of the proposed PDA process

To complete the evaluation the Department may require additional information, details and clarifications.

4.7 Unsolicited Proposal Evaluation Process

4.7.1 Overview

The evaluation of Unsolicited Proposals may include up to three steps:

- Pass/Fail for filing requirements
- Initial Evaluation
- Detailed Evaluation

The objective of the evaluation process is to determine if:

- The project and the Unsolicited Proposal appears to meet the statutory requirements
- The project is of potential value to the State
- The Proposer is qualified to execute the project if awarded
- The proposed project appears to have a reasonable probability of being successful as a P3 project

At any of these steps the Unsolicited Proposal may be found noncompliant or inconsistent with Department goals or priorities and therefore be rejected and returned to the Proposer. If the Proposal passes all three steps of the evaluation the Department may begin a process to solicit competing Proposals. As determined necessary and appropriate, the Department will be assisted by its consultant team members in the evaluation process.

4.7.2 Evaluation Period

Each Pass/Fail Review, Initial Evaluation and Detailed Evaluation will be completed within a period to be determined at the sole discretion of the Office of P3 Initiatives, based on proposal complexity, availability of resources, workload, and other relevant factors.

4.7.3 Pass/Fail Review

The Office of P3 Initiatives will determine whether an Unsolicited Proposal meets the filing requirements as described in above in Section 4.5.

4.7.4 Initial Evaluation

Once an Unsolicited Proposal has passed the Pass/Fail Review, the Office of P3 Initiatives will make a preliminary assessment of the Proposal. At any time during this evaluation, the Office of P3 Initiatives may request clarifications or additional information from the Proposer. The Office of P3 Initiatives may determine that the Proposal is not in the best interest of the State or is not consistent with Department priorities/goals and, if so, it will reject the Proposal and return it. If the Office of P3 Initiatives is satisfied that the project is of value to the State and consistent with Department priorities and goals, it will summarize its initial assessment of the Proposal for confidential discussion with the appropriate Committees and potentially the Transportation Board. The input received from these discussions will be considered by the Office of P3 Initiatives as part of the evaluation. At this point or any earlier stage in the process, the Office of P3 Initiatives, in

its discretion, may reject and return the Proposal (along with the second check) or it may proceed to the Detailed Evaluation phase.

4.7.5 Release to Public

If, after completion of the Initial Evaluation, the Proposal is preliminarily recommended to proceed to the Detailed Evaluation stage, the Executive Summary will be made public pursuant to ARS §28-7707, Section B.

4.7.6 Detailed Evaluation

The Detailed Evaluation will be made by the Office of P3 Initiatives with input from the appropriate Committees including any assigned TAC. This evaluation will be more comprehensive than the Initial Evaluation and will examine technical, financial and legal elements of the Proposal in greater detail. At this stage in the process the Department may at its sole discretion choose to seek public input through public polls, focus groups or other public meetings. Payment of the costs of these efforts will be as described above in Section 4.5.2.

At any time during the Detailed Evaluation the Office of P3 Initiatives may at its sole discretion request clarifications, additional information or choose to meet with the Proposer to clarify certain issues in the Proposal. Such meetings are for information only and the Department is not bound by any such informal discussions.

At the completion of the Detailed Evaluation the Office of P3 Initiatives may reject the Proposal and return it to the Proposer or it may -- having satisfied itself with Proposer qualifications and capability, value of the project and suitability of a P3 delivery process -- choose to move the project forward.

4.8 Unsolicited Proposal Evaluation Criteria

Evaluation of Unsolicited Proposals will address all information required in section 4.6. Some of the particular areas of emphasis will include the following:

4.8.1 Proposer Qualifications

Evaluation of Unsolicited Proposals will assess the structure of the Proposer team, the background and experience of the Proposer, individual team members, and key personnel experience in developing, designing, constructing, financing, operating and/or maintaining comparable projects, and the quality of the specific experience with similar projects. The specific nature of experience, key personnel and background required will depend on the specific project as well as the project delivery mechanism proposed.

4.8.2 Approach to Development

The Proposer will be assessed on the approach to the development, design, construction, financing, operations and/or maintenance of the proposed project including relative roles and responsibilities between the Department and the Proposer, innovation and risk sharing.

4.8.3 Financial Capability and Quality of Financial Plan

The overall capability of the Proposer will be assessed to determine whether the Proposer has sufficient financial capacity to assume the responsibilities and obligations required to deliver the project on schedule and on budget. An assessment will be made as to the quality, feasibility and soundness of the proposed financial plan.

4.8.4 Project Value

Proposals will be evaluated on a project's compatibility with existing Transportation Plans and its value in increasing capacity, decreasing congestion, improving air quality, improving safety or satisfying other State needs.

4.8.5 Added Value through P3 Approach

Proposal review will assess whether the Proposer has clearly demonstrated creativity, innovation and that moving a proposed project forward as a P3 project is advantageous to the State as compared to other public delivery methods.

4.9 Determination of Merit

At completion of the evaluation process described above in Section 4.7 and using the criteria described above in Section 4.8, the Office of P3 Initiatives, considering input from the relevant Committees, may reject the Proposal or it may determine that the Proposal has sufficient merit to move to the next stage.

If an Unsolicited Proposal is found to have merit, a competitive solicitation process may be initiated pursuant to ARS §28-7704, Section A2 as determined appropriate by the Department.

4.10 Competing Proposals

Once a determination of merit is made the Department may choose to initiate a Request for Competing Proposals. Generally such a request is expected to follow the guidelines as stated in Section 5 of these Guidelines.

4.10.1 Original Proposer Qualifications

The original Proposer of an Unsolicited Proposal which is found to have merit by the Department and for which Competing Proposals are sought may be deemed to be qualified by the Department and therefore not have to submit Qualifications in response to an RFQ for the Competing Proposals. Alternatively, at its sole discretion the Department may require the original Proposer to submit a SOQ in response to an RFQ.

4.10.2 Original Proposal May Be Modified

The Department may, at its sole discretion, modify a project or project scope and other commercial, technical and financial terms contained in an Unsolicited Proposal which is found to have potential merit by the Department in connection with a Request for Competing Proposals.

4.11 Suspension of Certain Unsolicited Proposals

While Unsolicited Proposals can be submitted for any projects which are characterized as Eligible Facilities; it has been determined that it may be in the best interest of the Department and potential Proposers if a suspension is placed on certain types of projects periodically. Until further modified by changes to these P3 Program Guidelines, all potential Proposers are notified that the Department will not accept Unsolicited Proposals for the following:

- **Highway projects that employ Design-Build Agreements and no other aspect of P3 delivery.**

The imposition of a Suspension on Certain Unsolicited Proposals does not prohibit a potential Proposer from requesting a one-on-one meeting with the Department to discuss potential Unsolicited Proposal concepts.

5. SOLICITED PROPOSALS

5.1 Overview

A solicitation may be initiated either through the Department's finding that an Unsolicited Proposal has merit (see Section 4.9 above) or through its identification of a project for which it believes a procurement as a P3 is in the best interest of the State.

The solicitation process may be a one-step process, where RFPs are advertised and issued or a two-step process which involves RFQs, evaluation of SOQs submitted in response to an RFQ in order to develop a shortlist of Proposers and then RFPs sent to the shortlisted Proposers. Other steps may be included as further described in this Section.

5.2 Industry Meetings

Prior to the initiation of a formal procurement process the Department may choose to conduct outreach through a process known as an Industry Meeting. An Industry Meeting may be held prior to issuing a RFI, RFQ or RFP in order to inform the industry of the opportunity and to hear industry suggestions which may at the Department's sole discretion be incorporated into Solicitation Documents.

5.3 Requests for Information/Expression of Interest (RFI)

As an additional evaluation tool, some projects may lend themselves to preparing a Request for Information and/or Expression of Interest. This may be used as a method to determine if there is sufficient interest to move a project forward within the Department P3 framework and assess under what type of conditions the project will be of interest to the private sector. . The RFI could also be the first step in the solicitation process with responders being placed on the list of firms that receive the next step of the solicitation.

5.4 Requests for Qualifications (RFQ)

The Department may issue an RFQ for a project for the purpose of short listing/pre-qualifying Proposers who are determined by the Department to have the qualifications, experience, financial capability and approach required for successful development of the project. In response to an RFQ, Proposers must submit a SOQ. The RFQ may require Proposers to submit information different from or in addition to the information referenced in these Guidelines.

5.4.1 Proposer's Structure and Experience

As a part of the SOQ, Proposers may be required to provide information related to the structure of the Proposer team, the background and experience of the Proposer, individual team members, and key personnel with conducting the applicable components comparable to the project such as: developing, designing, constructing, financing, operating and/or maintaining, and their specific experience with similar projects.

5.4.2 Proposer's Financial Capacity

The RFQ may, at the Department's discretion, require submittal of financial information from the Proposer. The intent of this requirement is to ensure that the Proposer has sufficient financial capacity to assume the responsibilities and obligations required to deliver the project on schedule and on budget. As part of the financial capacity assessment, the Department may require the Proposer to submit evidence of insurance and evidence of ability to obtain bonding or letters of credit, which may include performance, payment and/or operations and/or maintenance bonding. The Department may also require the submission of financial statements and other evidence of financial capacity.

5.4.3 Approach to Scope of Work

Proposers may, at the Department's discretion, be required to submit, as part of the SOQ, a description of their approach to and conceptual plan for implementing some or all of the development, design, construction, financing, operations and/or maintenance of the project for which the SOQ is submitted. Such required information may include a description of the Proposer's conceptual plan to develop, design, construct, finance, operate and/or maintain the project, commitment of resources and the use of subcontractors and suppliers. The RFQ may also require that the SOQ include, among other things, the following:

- The Proposer's conceptual approach to financing the project, if applicable
- The Proposer's view of the roles and responsibilities of the owner, the Proposer and third parties in connection with the project (in terms of allocation of work or risk and implementation/delivery)
- A description of how certain elements of the project will be achieved
- A list of the major risk issues and factors associated with the project
- A description of the availability of Proposer resources for the project

5.5 Proposer Review Meetings

Proposer Review Meetings may be held at the discretion of the Department, are intended to share Department information regarding RFP-related documents (Instruction to Proposers, Technical Provisions, Draft Agreements) with prequalified or shortlisted Proposers and to obtain feedback, comments and suggestions from such Proposers regarding items such as draft documents, key project components and technical, financial and legal issues. No Proposer information which is confidential or proprietary will be shared.

The meetings may be joint workshops with all shortlisted or prequalified Proposers or individual one-on-one meetings (which may be physical meetings or conference calls), as deemed necessary by the Department. One-on-one meetings with the shortlisted Proposers are generally confidential and often address topics that are proprietary to the shortlisted Proposer. Nonetheless, the Department will always reserve the right to modify or revise the RFP documents as a result of the one-on-one meetings. Generally, shortlisted/prequalified Proposers shall each be afforded materially the same opportunity to meet and talk with the Department in connection with the project and, to the extent practicable, the same Department personnel and advisors should be present during each round of meetings.

In addition to meetings with the prequalified/shortlisted Proposers, the Department may issue drafts of some or all of the RFP documents, including Instructions to Proposers,

Technical Provisions/Scope of Work and the draft Agreement. Shortlisted Proposers will be encouraged to submit written comments and questions concerning these documents and the Department will review and consider such input and potentially revise or adjust the documents in consideration thereof. The Department may limit the number, scope or length of written comments and questions.

The goal of the Proposer Review process is to refine the RFP to attempt to address Proposer concerns, to the extent possible, in order to maximize competition, improve Proposal quality, reduce or eliminate post-selection negotiations, promote partnerships and incorporate innovative and/or cost-saving ideas. The Proposer Review process can prove mutually beneficial to the Department and potential Private Partners. Information and materials that may be provided and discussed during Proposer Review Meetings may also include updated project information on preliminary engineering, right-of-way acquisition, utility work, environmental clearances, traffic and revenue studies and the procurement schedule.

5.6 Required Content for Response to RFP

Upon making a determination of shortlisted/prequalified Proposers for a particular project, the Department may issue an RFP which will in most cases require the Proposers to provide a Proposal containing at least two basic components, a Technical Proposal, and a Financial Proposal. The Department may also issue an RFP without first issuing an RFQ. If the project delivery model is a Pre-Development Agreement (PDA), then components of the Technical Proposal and Financial Proposal as well as additional components may be required as discussed in Section 5.6.3. The RFP may require Proposers to submit information different from or in addition to such information referenced in these Guidelines.

5.6.1 Technical Proposal

The Department may require the Proposer to provide such technical information regarding the project scope of work and technical requirements as the Department deems appropriate. Such required information may include, without limitation, design elements and approach, construction approach, operations approach, maintenance approach, project management approach, schedule, phasing, quality control and assurance approach, and other information as appropriate for the project's development. The intent of the Technical Proposal is to provide assurance that the Private Partner selected has:

- A sufficient understanding of the project or desired service
- An approach that meets technical and contractual requirements
- The ability to timely and efficiently deliver the project or service in a quality manner consistent with contractual requirements

The Department may choose to include a process for Alternative Technical Proposals (ATCs) as part of the RFP process. ATCs are a mechanism to allow the private sector to submit and have approved alternatives to the stated technical criteria in the RFP documents. If ATCs are utilized the details for how they will be submitted, reviewed and approved will be included in the RFP.

5.6.2 Financial Proposal

The type and extent of financial documentation to be submitted as part of the Financial Proposal will depend on the delivery mechanism. The RFP may also require that the Proposer update the financial information provided in the SOQ and will require disclosure of any material changes in the Proposer's financial position.

If the RFP and project scope require the Proposer to finance any or the entire project, the RFP will generally require that the Financial Proposal must include a Financial Plan and a Financial Model. The nature of the project, the project delivery method and market conditions at the time of the proposal will dictate:

- The contents and level of detail of the Financial Plan
- Whether the Financial Proposal is fully or partially committed
- The permitted commitment and closing conditions that may be included by the Proposer

Requirements for a Financial Plan may require the Proposer to:

- Identify the financial institution(s) involved
- Provide a description of senior debt finance, mezzanine debt finance, equity and quasi-equity finance (including subordinated debt or loan stock), any other forms of finance
- Identify investors, lead arrangers, lead managers and/or underwriting banks and/or quasi-equity providers that have given indications/commitments; and identify their level of project knowledge and due diligence performed
- Describe the type and purpose of each funding source and facility
- Describe the proposed steps and timeframes for reaching financial close; and
- Provide specific information for each separate bank, loan facility, or other debt instrument such as commitments, amounts, terms and conditions attaching to the loan, drawdown schedule, capital repayment moratorium, repayment schedule and final maturity date, events of default, security required (including any guarantees), any reserve accounts, interest rate, any proposed hedging arrangements in respect of interest rates, average life of debt, credit ratings, due diligence, and timetables

Generally, requirements for a Financial Model submittal may include inputs (specific dates, periods, revenues, expenditures, contingencies and profit margins, macroeconomic assumptions, and inflation), outputs (cash balances, returns on equity, cost of capital, net present value of construction costs, and reserves), and calculations. Proposers may be required to provide detailed backup information, a list of assumptions, and details of how the financial model operates.

The RFP will provide details regarding applicable requirements for the Financial Plan and Financial Model portions of the Financial Proposal. The Department may choose to include a process for Alternative Financial Proposals (AFCs) as part of the RFP process. AFCs are a mechanism to allow the private sector to submit and have approved alternatives to the stated financial plan criteria in the RFP documents. If AFCs are utilized the details for how they will be submitted, reviewed and approved will be included in the RFP.

The Department wishes to maximize value to the State by utilizing the P3 process. Where possible and financially feasible, the Department will seek Proposals that minimize the use of public funds as well as the creation of State-supported debt or pledges. If a Proposal including public subsidy or contribution is submitted, then the RFP may require that the Proposal identify the amount of public funds required and specify the project-level approvals by the Department, other appropriate public entities, private lending institutions and ratings agencies.

5.6.3 Pre-Development Agreement (PDA) Approach

If the procurement delivery model is a PDA, the Proposal contents will generally differ significantly from that required for other P3 project delivery methods. In the case of a PDA, the project has typically not advanced to a level where a defined technical approach and firm pricing and financing (debt or equity) may be proposed. Environmental approvals may not be in place, the alignment may not be set and the scope of work may not be defined. Specific proposal requirements will be detailed in the RFP.

The PDA process is further discussed in Section 7.2 below. Generally, the proposal for a PDA will focus on the Proposer's:

- Conceptual plan for developing the project
- Conceptual plan for financing the project
- Approach to undertaking the PDA scope of work, completing the development process and reaching project completion
- Price for undertaking the work and relative financial responsibilities

Further information on Unsolicited Proposal submission requirements were listed in Section 4.6 above.

6. EVALUATION AND SELECTION PROCESS

6.1 Overview

As previously discussed, the Department may at its sole discretion decide to utilize a two-step procurement process with both an RFQ and an RFP. Upon receipt of the SOQs from Proposers in response to an RFQ, the Department will evaluate and short-list Proposers who are deemed most highly qualified and eligible to submit a Proposal in response to an RFP. The Department will post RFQs and single-step RFPs on the Department website.

When all responsive Proposals have been evaluated, the Department may, at its sole discretion, request proposal revisions (also known as best and final offers) from the Proposers as further discussed in Section 6.4. Once an apparent Best Value Proposer is selected, the Department may enter into negotiations with that Proposer or proceed directly to seek Director approval of the Agreement. Upon completion of satisfactory negotiations, if applicable, the Department will seek Director approval of the Agreement.

6.2 General Evaluation Criteria

6.2.1 Pass/ Fail and Responsiveness

When an SOQ or a Proposal is submitted, an initial determination of responsiveness will be made and the SOQ or Proposal will be reviewed based upon pass/fail criteria set forth in the RFQ/RFP. To be responsive, the SOQ or Proposal should conform to the RFQ/RFP instructions regarding organization and format and contain the complete submittals required by the RFQ/RFP. Those SOQs or Proposals not responsive to the RFQ or RFP, respectively, or that do not pass the pass/fail criteria will be excluded from further consideration. The Department reserves the right to waive minor informalities, irregularities and apparent clerical mistakes which are unrelated to the substantive content of the SOQs or Proposals and may seek clarifications in order to address such minor informalities, irregularities and apparent clerical mistakes, as well as other deficiencies.

6.2.2 Evaluation Criteria for SOQs

The RFQ for a project will clearly describe the criteria on which the Proposer, including proposed staff, subcontractors and subconsultants experience will be evaluated. While there may be some commonality of evaluation criteria among all RFQs issued under the P3 Program, evaluation criteria and weightings of evaluation criteria will vary on a project-by-project basis to reflect project scopes of work, goals, delivery mechanisms and other relevant factors. Information on the relative importance or weightings of particular evaluation criteria may be included in the RFQ, with the level of detail and specificity to be determined by the Office of P3 Initiatives on a project-by-project basis.

Evaluation criteria may include some or all of the following:

- Capability and relevant experience of Proposer
- Team structure and organization
- Key personnel qualifications and resource availability
- General approach to project development and delivery
- Relationships, roles and responsibilities between the Department and Proposer,
- Financial capability
- Ability to provide required guarantees and bonds

- Quality of project references
- Other information required by the RFQ

6.2.3 Evaluation Criteria for Proposals

While there may be some commonality of evaluation criteria among all RFPs issued under the P3 Program, evaluation criteria and weightings of evaluation criteria will vary on a project-by-project basis to reflect project scopes of work, goals, delivery mechanisms and other relevant factors. Information on the relative importance or weightings of particular evaluation criteria may be included in the RFP, with the level of detail and specificity to be determined by the Office of P3 Initiatives on a project-by-project basis. The specific evaluation criteria for a Proposal will be set forth in the RFP.

Typical criteria may include those that evaluate:

- Qualifications, experience and capabilities (as described in 6.2.2 above) if not previously addressed in an RFP process or if any changes
- Pricing or, where relevant, Project scope
- Project technical approach
- Project management approach
- Quality approach
- Financing plan and feasibility
- Operations and maintenance plan
- Project delivery schedule
- Technical approach
- Term length
- Public support
- Compatibility with Department's program
- Approach to User Fees (if applicable)
- Other specific information as required by the RFP

6.3 General Evaluation Methodology

6.3.1 Evaluation Methodology for SOQs

After the Department's pass/fail and responsiveness review, a substantive evaluation of the SOQ will take place if the SOQ is found to be responsive and achieves a pass rating on all pass/fail criteria. The RFQ for a particular project will set forth the evaluation methodology for the SOQs.

Unless specifically stated in the RFP, once qualified proposers are selected, the rankings, scores and evaluation of the SOQs are not expected to carry over to the evaluation of the Proposals for such project.

6.3.2 Evaluation Methodology for Proposals

While the Department reserves the right to develop an evaluation approach tailored to each project, it is anticipated that most projects will utilize a Best Value evaluation methodology. The Office of P3 Initiatives will determine in advance the evaluation process and will develop an internal proposal evaluation plan.

The Department reserves the right, in its discretion, to utilize other evaluation methodologies including low bid, lowest adjusted cost, highest payment, lowest public subsidy, "trade-offs" and any other methodology that is appropriate.

If the project is being procured as a PDA the evaluation focus may be on the overall qualifications to deliver the project, innovations, ideas and approaches to realizing a feasible projects as demonstrated by the project development and conceptual financial plan, financial capability and Proposer's ability to successfully carry out the project scope anticipated under the PDA including realizing a feasible project.

6.4 Proposal Clarifications, Revisions and Best and Final Offers

To complete the evaluation process the Department may choose to request Proposal clarifications following the process outlined in the RFP.

After evaluation of the Proposals, the Department may decide to ask Proposers to submit BAFOs, or Proposal revisions. Typically, only those Proposers who are responsive and/or whose Proposals fall within a competitive range of the most highly ranked responsive proposals will be permitted to submit Proposal revisions. Proposal revisions are not mandatory for all procurements and may not be useful or appropriate for some projects.

If the Department elects to request Proposal revisions, the Department may have discussions with the Proposers in advance of and/or following issuance of the request for Proposal revisions. More than one series of Proposal revisions may occur if determined by the Department to be in the State's best interest.

The purposes of any discussions with Proposers are to (a) inform each Proposer of any changes or potential changes to the terms and requirements of the solicitation and of weaknesses and deficiencies in the Proposer's Proposal, and (b) receive and consider questions and comments from each Proposer. The Department will not assist or coach any Proposer in how to improve its Proposal. The Department will not share the proprietary content of a Proposer's Proposal with any other Proposer during the revised Proposal solicitation process.

6.5 Selection of Apparent Best Value Proposer

Once the Evaluation Committee has determined a total Proposal score for each Proposal based on the evaluation criteria and methodology set forth in the RFP, it will assign rankings to the Proposals (whether based on the original Proposals or Proposal revisions). It will present its recommended rankings to the Director of the Office of P3 Initiatives.

6.6 Negotiations

The Department may engage in negotiations regarding project elements, project scope, risk allocations, price, project financing, financial terms, P3 terms, technical requirements, alternative technical concepts of unsuccessful Proposers and other matters with the Proposer identified as offering the apparent best value Proposal. Except for alternative technical concepts of unsuccessful Proposers, the Department will not disclose the proprietary contents of any Proposal to competing Proposers during the negotiation and selection process pursuant to ARS §28-7707, Section B. As may be provided in the Solicitation Documents, the Department may discuss an acceptable or potentially acceptable Proposal with the Proposer to assess that Proposer's ability to meet each requirement of the procurement.

If at any point in negotiations, it appears to the Department that the apparent highest ranking best value Proposer will not provide the Department with the overall best value or that the parties will be unable to reach agreement, the Department may suspend or

terminate negotiations with the apparent best value Proposer and enter into negotiations with the Proposer submitting the next highest ranking best value proposal. This process may continue until the Department reaches an agreement acceptable to it or determines that it will not be able to do so. The Department is not required to enter into negotiations with any Proposer.

7. CONTRACTING

Prior to developing, designing, constructing, financing and/or operating and maintaining a project, a Proposer selected must enter into an Agreement with the Department. Because of the unique nature of every project and the potential for a variety of P3 approaches and project delivery methods, it is anticipated that Agreements may differ significantly. For instance, the initial Agreement for a PDA will be very different than a long-term Concession. The Agreement will define the rights and obligations of the parties with regard to the project. The Department will consider such policy, legal, financial and technical advice as it deems necessary or appropriate to successfully develop, structure and negotiate the Agreement. The Department also may seek the advice and involvement of affected state, local or regional public entities during the negotiation process.

7.1 General Terms

The Agreement may include, but not be limited to, the following:

1. The right of the Private Partner to plan, develop, design, construct, finance, operate and maintain, or any combination of the foregoing, the project; the date of termination of the Private Partner's authority; duties and rights with respect to the project; and the handback and other conditions under which the project will be returned to the responsible public entity;
2. The mechanism by which User Fees, if any, may be established and adjusted. Any User Fees will be set at a level that takes into account the nature of the project; account for any outstanding debt payments, capital costs (e.g., design, construction, rehabilitation, expansion), the operations and maintenance costs, a return to the Private Partner and upfront, periodic or revenue sharing payments, if any, to the Department. A schedule of the initial User Fees may be included in the Agreement along with an adjustment methodology and be made available by the Private Partner to any member of the public on request. If the project is a managed lanes/express lanes project, methodology for variable, congestion and/or dynamic pricing will be addressed;
3. The performance milestones that will be required of the Private Partner along with any security related to the development, design, construction, finance, operation or maintenance of the project;
4. Responsibilities for the acquisition of necessary environmental approvals (if not then obtained) and other required permits and approvals for the project, including but not limited to railroad, waterway and utility crossings;
5. The manner, if any, in which the Private Partner and the Department will work together to establish interconnections and interoperability between the project and other public transportation facilities;
6. Responsibilities for the acquisition of right-of-way, including the procedures by and conditions under which the Department will exercise its power of eminent domain to facilitate any right-of-way acquisitions necessary to construct the project;

7. The design, construction, operation, maintenance and/or handback standards with which the Private Partner must comply;
8. The requirements of the Private Partner to submit plans for the project scope of work, which may include development, design, construction, operation and maintenance of the project, that conform to standards set forth in the Agreement, and the rights of the Department and other parties to review, comment and/or approve the same;
9. The requirements of the Private Partner to submit any design and construction submittals and the rights of the Department and other parties to review, comment and/or approve the same;
10. The role, if any, of an Independent Engineer;
11. The rights of the Department and any designated representative or an independent engineer, if any, to inspect, audit and oversee the Private Partner's performance of the Agreement;
12. The right of the Private Partner to make and enforce reasonable rules with respect to the project during any operations and maintenance phase;
13. The terms, if any, under which the Private Partner will reimburse the Department for services provided;
14. The terms under which compensation would be paid to the Private Partner in the event of termination of the Agreement (including for convenience, excused failure to close financing, Private Partner default, Department default other specified termination event);
15. The terms for compensation to the Department, such as revenue sharing and provisions that may apply to refinancing activities, if applicable;
16. The terms and conditions of financing for the project, including any terms or conditions under which the Department will contribute financial or other resources to the project;
17. If applicable, the terms, conditions and performance measures that apply to the payments to the Private Partner;
18. The events that will constitute default by the parties, notice and cure rights (including lenders' rights), and remedies available to the parties in the event of default;
19. Lender's rights and remedies with respect to Private Partner defaults and Department remedies, if appropriate and applicable;
20. The events that will constitute force majeure, or may result in time extensions or additional compensation and the remedies the parties will have in the event of occurrence;

21. The insurance and bonding/letter of credit and reserve requirements the Private Partner will be required to meet at each stage of development, financing, design, construction, operation, maintenance and handback of the project;
22. The allocation between the Private Partner and the Department of responsibilities and liabilities for, among others, property damage, personal injury, repair, site conditions, utility relocations, right of way acquisition and hazardous waste remediation;
23. The obligations of the Private Partner to maintain records, to allow inspection and audit and to provide reports to the Department;
24. The obligations of the Private Partner to file appropriate financial statements in form and frequency set forth in the Agreement
25. The conditions under which the Private Partner or the Department may make distributions or assign its rights and obligations under the agreement and/or its rights to the project or the Agreement;
26. The roles and responsibilities of the Department and the Private Partner with respect to coordinating with external stakeholders and obtaining third party approvals;
27. The roles and responsibilities of the Department and the Private Partner with respect to conducting public involvement activities;
28. Any other terms and conditions appropriate for the project.

7.2 Pre-Development Agreement

A project that is developed as a PDA will have an initial pre-development phase that will potentially lead to a determination of feasibility and ultimately to a final scope, price and financing plan

Given the nature of a PDA, not all of the concepts and provisions described in Section 7.1 above will apply or be relevant to such a project. In addition, under a PDA, additional concepts or provisions may apply and be included, such as:

- An initial scope of work to assist the Department with advancing and defining a feasible project that can be ultimately priced and financing secured. The scope of work may include a variety of activities some examples of which include (i) project planning and development; (ii) advance right-of-way acquisition; (iii) design and engineering; (iv) project scoping; (v) cost and revenue estimates; (vi) conducting traffic or ridership modeling and transportation and revenue studies; and (vii) ascertaining the terms and conditions under which financing may be obtained for the proposed facility or facilities
- Relative responsibilities between the Department and the Proposer during the PDA phase
- The payment structure, terms and conditions under which the Private Partner will be compensated for undertaking the PDA scope of work, including whether such work shall be contributed at a discount or as “sweat equity”
- Schedule and milestones applicable to the PDA scope activities

- Terms and conditions for right of first negotiation, or similar right, in favor of the Private Partner with respect to the design, construction, financing, operation and maintenance, or any combination of the foregoing, when the project is ready to be priced, financed and delivered including how price reasonableness and value for money will be determined
- The process which applies if the Department and the Private Partner are unable to agree upon any terms of an Agreement under which the Private Partner will design, construct, finance, operate and/or maintain the project, including the rights of the Department to procure another entity to do the same and any compensation that may be payable to the Private Partner
- Other elements necessary for completion of the PDA process

7.3 Liability for Private Obligations

The Department, the State of Arizona, or a political subdivision of the State are not liable for any financial or other obligation of a project or service provided by a Private Partner except as explicitly agreed by the State or political subdivision in an Agreement or allowed by statute. The credit of the Department and the State will not be pledged by a Private Partner financing a project under the P3 Program provided, however, that the foregoing is not intended to restrict or limit the ability of the Department, the State or any other entity to act as a conduit issuer of private activity bonds or initiate the TIFIA (or similar program) credit facility process with any federal agency.

7.4 Right-of-Way Interests

No project under the P3 Program will be “sold” to a Private Partner, but leasehold, easement, operating, license, right-of-entry permit or similar rights may be provided to a Private Partner. The State, through the Department, will retain ownership of all projects and project right of way, unless the Department elects or is required to leave fee title to all or portions of the underlying project in a third party. Upon completion of construction and acceptance, all projects consisting of highways will be considered part of the State’s highway system.

7.5 Handback Provisions

At the end of the Agreement’s term with a Private Partner, the project will be required to be returned to the Department at the level of technical standards and conditions specified in the Contract Documents, typically known as the Handback Provisions. After Handback, the Department may evaluate whether to procure a new Agreement or operate and maintain the project itself.